

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

STEVE ERIC RAMOS,

Defendant and Appellant.

2d Crim. No. B174027
(Super. Ct. No. CR 49399)
(Ventura County)

Steve Eric Ramos appeals a judgment imposed after our remand in *People v. Ramos* (May 20, 2003, B154008) [nonpub. opn.]. We conclude that the trial court did not abuse its discretion by refusing to strike a prior serious felony conviction pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, and that the sentence does not constitute cruel or unusual punishment. We affirm.

FACTS AND PROCEDURAL HISTORY

A jury convicted Ramos of two counts of second degree (bank) robbery and the court convicted him of two counts of felony drug possession. (Pen. Code, § 211; Health & Saf. Code, § 11350, subd. (a).)¹ The jury also found that Ramos suffered three prior serious felony convictions, alleged for sentence enhancement and recidivist

¹ All further statutory references are to the Penal Code.

sentencing under the Three Strikes law. (§§ 667, subd. (a), 667, subds. (b)-(i), 1170.12, subds. (a)-(d).) The trial court sentenced Ramos to two consecutive 25-year-to-life terms for the bank robberies, plus two consecutive five-year enhancements pursuant to section 667, subdivision (a). It also sentenced him to two concurrent four-year terms for the drug offenses, for a total determinate term of 14 years.

Ramos appealed. (*People v. Ramos, supra.*) Among other things, he contended that insufficient evidence supported the finding that he suffered a prior felony conviction for attempted robbery on September 14, 1990, alleged as a strike in the felony information. We agreed because the 1990 trial court documents were not clear whether Ramos was convicted of attempted robbery. We remanded to permit the prosecutor "'to present additional evidence . . . of the prior conviction allegation in order to obtain a different result.'" (*People v. Monge* (1997) 16 Cal.4th 826, 845.)" (*Ibid.*) In the event the prosecutor was unable to prove the prior felony conviction, we concluded that Ramos could request the trial court to strike one or both of the remaining prior felony convictions. (*People v. Superior Court (Romero), supra*, 13 Cal.4th 497.)

On remand, the prosecutor conceded that he could not prove beyond a reasonable doubt the allegation of the prior attempted robbery conviction. He requested that the trial court dismiss the allegation. The trial court granted the request in furtherance of justice. (§ 1385, subd. (a).)

Ramos then brought a *Romero* motion, requesting that the trial court strike the first strike allegation, a 1985 conviction for robbery. According to the probation report, Ramos took the purse of a customer at a fast-food restaurant.² The victim fell and suffered minor injuries when he grabbed her purse. Ramos was then 18 years old.

The trial court denied the *Romero* motion and stated: "Mr. Ramos is a person who has made criminal predation on other people a part of his life. That's the way he lives his life. That's been the pattern. . . . [¶] [H]is record as an adult is very poor. . . .

² We have granted Ramos's request to take judicial notice of the appellate record, including the probation report, in the earlier appeal.

[¶] Looking at all the *Romero* criteria . . . the need at this point is to isolate Mr. Ramos from the rest of society for as long as possible to make sure this doesn't happen again.

[¶] I think it would be an abuse of discretion for me . . . to strike the 1985 robbery conviction."

The trial court then sentenced Ramos to the same term of imprisonment imposed at the first sentencing.

Ramos appeals and contends that: 1) the trial court's decision to deny the *Romero* motion is unreasonable and an abuse of discretion, and 2) his sentence constitutes cruel and unusual punishment.

DISCUSSION

I.

Ramos asserts that the trial court abused its discretion by denying the *Romero* motion. He asserts that he was not armed when he committed the bank robberies and points out that the robbery victims were not injured. Ramos prefers alternative sentencing that would be "substantial," yet provide "ample punishment."

Pursuant to section 1385, subdivision (a), the trial court may strike a prior felony conviction "in furtherance of justice." (*People v. Williams* (1998) 17 Cal.4th 148, 161.) The trial court and the reviewing court "must consider whether, in light of the nature and circumstances of his present felonies and prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects, the defendant may be deemed outside the scheme's spirit, in whole or in part" (*Ibid.*) At the very least, the reason for dismissing a strike conviction must be that which would motivate a reasonable judge. (*Id.*, at p. 159.)

We review rulings upon motions to strike prior felony convictions under a deferential abuse of discretion standard. (*People v. Carmony* (2004) 33 Cal.4th 367, 373-374; *People v. Williams*, *supra*, 17 Cal.4th 148, 162.) Appellant bears the burden of establishing that the trial court's exercise of discretion is unreasonable. (*People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 977-978 [presumption that trial court acts to achieve lawful sentencing objectives].) We do not substitute our decision for that

of the trial court. "It is not enough to show that reasonable people might disagree about whether to strike one or more of [defendant's] prior convictions." (*People v. Myers* (1999) 69 Cal.App.4th 305, 310.)

The trial court did not abuse its discretion because Ramos has not established that he is an exception to the Three Strikes sentencing norm. (*People v. Carmony, supra*, 33 Cal.4th 367, 378.) Ramos has an adult criminal record of numerous drug offenses, automobile theft, robbery, and assault with a deadly weapon. His 1990 prior felony conviction (the second strike) concerned the shooting of a robbery victim who did not release his money quickly enough. The probation report reveals that Ramos violated probation and parole many times, and that he has a long history of drug abuse.

Throughout his adult life, Ramos has shown a pattern of criminal behavior. (*People v. Gaston* (1999) 74 Cal.App.4th 310, 320 ["unrelenting record of recidivism" compels conclusion that defendant falls within spirit of Three Strikes law].) Viewing the nature of Ramos's crimes and his background, character, and prospects, he does not fall outside the spirit of the Three Strikes law.

II.

Ramos contends that his sentence of 50-years-to-life, plus a determinate 14-year term, constitutes cruel and unusual punishment given his age (33 years). (*People v. Deloza* (1998) 18 Cal.4th 585, 600-602 (conc. opn. of Mosk, J.) [111-year sentence violates constitutional prohibitions against cruel and unusual punishment because it is impossible to serve].) He relies upon the factors that he did not use a weapon during the bank robberies and that the robbery victims suffered no physical injuries, to argue that his sentence is disproportionate to the crimes committed. (*In re Lynch* (1972) 8 Cal.3d 410, 424.)

Ramos's sentence is not disproportionate for Eighth Amendment purposes. (*Ewing v. California* (2003) 538 U.S. 11, 28-31 [three-strike sentence of 25-years-to-life not grossly disproportionate for Eighth Amendment analysis]; *Lockyer v. Andrade* (2003) 538 U.S. 63, 73-77 [same].)

Nor is Ramos's sentence disproportionate under the California Constitution. (Cal. Const., art. I, § 17.) A successful disproportionality analysis is an exception and "exquisite rarity." (*People v. Weddle* (1991) 1 Cal.App.4th 1190, 1196.) "In practical effect, [defendant] is in no different position than a defendant who has received a sentence of life without possibility of parole; he will be in prison all his life. . . . [I]mposition of a sentence of life without possibility of parole in an appropriate case does not constitute cruel or unusual punishment under either our state Constitution . . . or the federal Constitution." (*People v. Byrd* (2001) 89 Cal.App.4th 1373, 1383 [affirming sentence of 115 years plus 444 years to life].)

The judgment is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

James P. Clonginger, Judge
Superior Court County of Ventura

Leonard J. Klaif, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Victoria B. Wilson, and Steven D. Matthews, Deputy Attorneys General, for Plaintiff and Respondent.